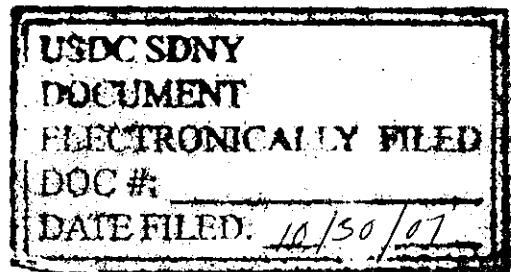


Jonathan S. Pollack
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New York, NY 10016
Tel (212) 889-0761
Fax (212) 889-0279



October 29, 2007 **MEMO ENDORSED**

BY FAX

See separate schedule
of forward (subject to pre-avow
Warren J. Ziegler Berman).

SO ORDERED:

Hon. Andrew J. Peck
United States Magistrate Judge

Via Fax (212) 805-7933
The Honorable Andrew J. Peck
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
Room 1370
New York, NY 10007 - 1312

Re: Elissa Becker v Eber Bros. Wine and Liquor Corp and Eber-NDC, LLC
07 CV 4022 (RMB)

Dear Judge Peck:

This office represents the Plaintiff in the above captioned action.

Pursuant to Your Honor's Scheduling Order of October 2, 2007 (the "Order") in the above referenced matter, Plaintiff was ordered to, *inter alia*: (i) advise Your Honor by October 30, 2007, as to whether Plaintiff would be proceeding with a Summary Judgment Motion, or requesting a Pre-Trial Order; and (ii) if Plaintiff were proceeding with Summary Judgment, bring said Motion no later than November 12, 2007.

Please be advised that Plaintiff intends to ask Judge Berman leave to move for Summary Judgment with respect to all of Plaintiff's claims.

At the time Your Honor issued the Order, a settlement conference (the "Conference") was scheduled before Judge Berman for October 26, 2007. At the request of Defendants, Judge Berman granted an adjournment of the Conference until November 9, 2007. Plaintiff is unable to attend the Conference on November 9th, 2007 and with Judge Berman's Chamber's consent, Plaintiff and Defendants are in discussions to reschedule the Conference for a different date during the week of November 5th, 2007. In light of the rescheduling of the Conference, we have refrained from commencing our

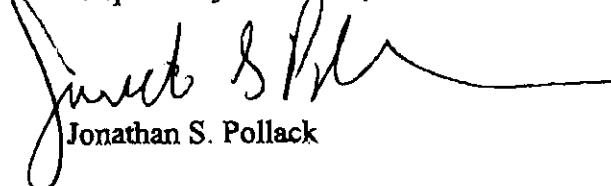
The Honorable Andrew J. Peck
October 29, 2007
Page 2 of 2

Summary Judgment Motion until we can request leave to bring the Motion and further, meet with Judge Berman and the Principals in this case with the hope of settling this matter. If we were to follow the Order as it currently stands, we might only have three (3) to seven (7) days to bring the Motion for Summary Judgment.

Accordingly, with consent of opposing counsel, we respectfully request that the Order be modified to reflect the following dates:

November 30, 2007 – Summary Judgment Motion is due
December 14, 2007- responsive papers are due
December 21, 2007 – reply papers are due

Respectfully submitted,



Jonathan S. Pollack

cc: Melanie Sarkis, Esq. (Attorney for Defendants/Via-Fax)
Ms. Elissa Becker
Steven E. Kurtz, Esq.

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: October 30, 2007

Total Number of Pages: 3

| TO | FAX NUMBER |
|---------------------------|--------------|
| Jonathan S. Pollack, Esq. | 212-889-0279 |
| Melanie Sarkis, Esq. | 585-419-8813 |
| | |

TRANSCRIPTION:

MEMO ENDORSED 10/30/07

Summary judgment schedule approved (subject to pre-motion clearance by Judge Berman).

Copy to: Judge Richard M. Berman